

DRAFT

COUNTY OF YORK



OPERATION AND MAINTENANCE OF THE TRANSFER STATION CONTRACT

BETWEEN

COUNTY OF YORK
DEPARTMENT OF ENVIRONMENTAL AND DEVELOPMENT SERVICES

AND

**AGREEMENT FOR OPERATION AND MAINTENANCE
OF SOLID WASTE TRANSFER STATION**

THIS AGREEMENT made and entered into this ____ day of _____, 2004, by and between the **COUNTY OF YORK, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as the "County") and Contractor, a corporation organized and existing under the laws of the State of _____, with local offices at _____, Yorktown, Virginia (hereinafter referred to as "_____");

W I T N E S S E T H:

WHEREAS, pursuant to the terms of a Ground Lease dated May 1, 1993, recorded in Deed Book 722, page 492, in the Clerk's Office of the York County Circuit Court (hereinafter referred to as the "Ground Lease") the County has leased to the Virginia Peninsulas Public Service Authority (VPPSA) a 4.777 acre parcel of land at the County's Waste Management Center at 145 Goodwin Neck Road, Yorktown, Virginia, for a period of up to twenty years, and by the terms of a Transfer Station Lease Agreement dated May 1, 1993, recorded in Deed Book 722, page 506 (hereinafter referred to as the "Lease Agreement") VPPSA subleased to the County the same parcel, all for the purpose of having VPPSA finance, construct and equip a solid waste transfer station on the parcel (hereinafter referred to as the "Transfer Station"); and

WHEREAS, by Request for Proposals No. 1400, issued July 30, 2004 the County sought proposals to obtain the services of a qualified contractor to operate and provide routine maintenance of the Transfer Station and load trucks to transport refuse from the Transfer Station to a regional landfill; and

WHEREAS, after evaluating the proposals received, the County desires to contract with Contractor, as an independent contractor, in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for the consideration hereinafter set forth, the County and Contractor agree as follows:

SECTION 1: DEFINITIONS:

For the purposes of this Request for Proposals, the following terms shall apply:

- 1.1. **Acceptable Waste:** Solid waste, including garbage trash and yard waste, from single family and multi-family residences, hotels and motels, bunk houses and campgrounds, picnic grounds and day use recreation areas, and from commercial premises but excluding solid waste from mining, agriculture or

silviculture operations or industrial processes or operations, or any other matter included in the definition of Unacceptable Waste.

- 1.2. **Change in Law:** Shall mean (a) the adoption, promulgation or modification or change in interpretation after the date of this Agreement of (i) any federal statute, law, regulation, ruling or executive order; or (ii) any Virginia or other applicable state, local or municipal statute, regulation, ordinance or ruling; (b) the imposition by a Government or Governmental Agency after the date of this Agreement of any material conditions in connections with the issuance, renewal or modification of any Contractor permit issued by a federal or state agency for the purpose of transporting and disposing Solid Waste which impose requirements affecting the obligations of Contractor in effect as of the date of this Agreement; or (c) the imposition by a government or a governmental agency after the Effective Date of this Agreement of any new tax or fee on the operation of a solid waste transfer facility, which tax or fee is payable by Contractor.
- 1.3. **Citizen Drop-off Center:** A facility such as shown in Exhibit A for customers to directly dispose of Solid Waste Materials that will be located on County Property located on Goodwin Neck Road.
- 1.4. **Contract Period:** The period which commences on January 1, 2005 and ends on June 30, 2007 and which may be extended by mutual consent of the parties for three additional three-year periods.
- 1.5. **Contract year:** The first Contract Year shall be the period beginning on January 1, 2005, and ending June 30, 2005. Thereafter, a contract year shall be the period beginning on July 1 and ending on the following June 30.
- 1.6. **Contractor Permits:** Permits issued by the federal, state or local governments authorizing the contractor to process, transport, and dispose of Solid Waste.
- 1.7. **Contractor's Proposal:** Written terms, conditions, and costs for performing the work dated August 30, 2004 and submitted by Contractor to the County in response to the County's RFP #1400 issued July 30, 2004, together with the proposal presentation with written amendments to the Proposal dated September 28, 2004.
- 1.8. **County-Designated Personnel:** The County Administrator, and other County employees or agents designated by the County Administrator to perform services under the Agreement.

- 1.9. **Cost Index:** The U. S. Department of Labor Statistics Consumer Price Index for the South Area Class “B/C” Transportation with the base period starting on the effective date of the contract, January 1, 2005 and re-adjusted annually on July 1st.
- 1.10. **Disposal Facility:** A landfill or similar facility, operated in accordance with all applicable laws for handling Solid Waste, to which the Contractor transports Solid Waste from the Transfer Station for final disposal.
- 1.11. **Effective Date:** This Agreement will be effective January 1, 2005
- 1.12. **Emergency Solid Waste Processing:** An unexpected, serious occurrence or situation urgently requiring prompt action by the Contractor, such as but not limited to pending or post storm event processing of Solid Waste at the Transfer Station as a result of increased curbside collections.
- 1.13. **Force Majeure:** Any cause beyond the reasonable control of the party whose performance under this Agreement is affected, including but not limited to acts of God, war, riot, fire, explosion, wind storm, flood or action by governments not party to this Agreement. Force Majeure shall not include strikes, labor disputes, or equipment failure.
- 1.14. **Franchise Haulers:** Any entity or entities that, pursuant to a contract with the County, collect, haul and unload Acceptable Waste at this Transfer Station during the term of this Agreement.
- 1.15. **Private Haulers:** Those individuals or entities that have a permit to engage in the business of collecting and hauling Acceptable Waste, as required by Section 19-40, York County Code.
- 1.16. **Solid Waste:** As defined in 9 VAC 20-80-140 of the Solid Waste Management Regulations, Department of Environmental Quality, Commonwealth of Virginia.
- 1.17. **Ton:** shall mean 2,000 pounds.
- 1.18. **Transfer Station:** The County’s facility located at 145 Goodwin Neck Road where Solid Waste is deposited from collection vehicles and transferred to waste hauling vehicles to be transported to a landfill or other disposal facility.

1.19. **Unacceptable Waste:** shall mean those types of Solid Waste prohibited by Chapter 19, York County Code, as in effect of the date of this Agreement, from being transferred at the County's facilities including, but not limited to waste, in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate state agency by or pursuant to federal or state law; biomedical waste; or any other waste which by its nature, characteristic or quantity cannot lawfully be disposed at a permitted sanitary landfill without special handling. For the purpose of this Agreement, the term Unacceptable Waste shall also include batteries, tires, gasoline, paint and paint cans (except empty paint cans). Unacceptable Waste shall also specifically include, but not be limited to:

1.19.1. **Special waste** to include any solid, liquid, semi-solid, gaseous material and associated containers generated as a direct or indirect result of a manufacturing process or from the removal of contaminant(s) from the air, water or land. Examples are:

1.19.1.1. Asbestos waste

1.19.1.2. Compressed gas cylinders

1.19.1.3. Contaminated food products and fabrics requiring supervised disposal

1.19.1.4. Contaminated soils resulting from the removal of underground storage tanks (UST)

1.19.1.5. Discarded chemicals and pesticides (not regulated as hazardous waste)

1.19.1.6. Materials from a hazardous waste incident clean-up

1.19.1.7. Hazardous wastes generated by small quantity generators

1.19.1.8. Incinerator ash

1.19.1.9. Industrial process waste

1.19.1.10. Infectious waste

1.19.1.11. Low specific activity radioactive wastes

1.19.1.12. Oil spill clean-up

1.19.1.13. Outdated products

1.19.1.14. Pesticide containers

1.19.2. **Restricted Waste such as:**

1.19.2.1. Tree limbs, logs, stumps or wood products larger than 6" in diameter and 6' in length;

1.19.2.2. Heating boilers (cast iron or tube type) or iron rods and steel pipe over 6' long

1.19.2.3. Automotive engine blocks

1.19.2.4. Automobile or truck frames or trailers

1.19.2.5. Large rolls or wire such as telephone, cable TV, electrical or guy wire

1.19.2.6. Building or land clearing debris from commercial enterprises, unless permitted by the County Code

1.19.2.7. Oil tanks

1.19.2.8. Drums that are not empty, properly cleaned and do not have at least one end removed

1.19.2.9. Bulk or flammable liquids

1.19.2.10. Any incinerated or burned debris

1.19.3. **Yard Waste** includes grass, leaves, and brush, other than that collected by a Franchise Hauler at roadside and is otherwise free of Unacceptable Waste.

SECTION 2: SCOPE OF SERVICES

The Contractor shall furnish the following services:

2.1. All Acceptable Waste delivered by or at the direction of the County, Franchise Haulers, Private Haulers or County residents and businesses to the Transfer Station operated by Contractor under the terms of this Agreement shall be received and

loaded into trailer trucks by Contractor for hauling and disposal to a permitted disposal site on the same day such Acceptable Waste is delivered to the Transfer Station, or placed in a covered transfer trailer pending full loading, hauling and disposal.

- 2.2. In order to minimize normal wear and tear on the Transfer Station floor Contractor will only use a loader equipped with a rubber-tipped bucket. If the regular loader is out of service Contractor, with the County's verbal permission, may use a steel-tipped loader for limited periods.
- 2.3. Contractor shall schedule its employees in such a manner so as to avoid delays and back-ups in receiving Acceptable Waste at the Transfer Station. At least four (4) employees shall be available at the Transfer Station during operating hours, which shall be as set forth below:
 - 2.3.1. Monday through Saturday 7:00 a.m. to 4:00 p.m. for County residents
 - 2.3.2. Monday through Saturday 6:30 a.m. to 4:00 p.m. for Franchise and Private Haulers
 - 2.3.3. The Transfer Station shall be accessible and available until 7:00 p.m. on any day that Contractor shall deem it necessary in order to perform its obligations under this agreement.
- 2.4. The Transfer Station shall be open on all days, except for Sundays and the following holidays unless otherwise agreed upon by the County and Contractor:
 - 2.4.1. New Year's Day
 - 2.4.2. Thanksgiving Day
 - 2.4.3. Christmas Day
- 2.5. Contractor shall not knowingly accept Unacceptable Waste delivered to the Transfer Station. Should a Private Hauler deliver Unacceptable Waste to the Transfer Station without Contractor's knowledge, the Contractor shall have no responsibility or liability arising out of the acceptance of Unacceptable Waste, in the absence of negligence or willful misconduct by Contractor, its employees or subcontractors. Contractor will not accept Yard Waste unless delivered by a Franchise Hauler.

- 2.6. The Contractor shall assist County with Emergency Solid Waste Processing of Acceptable Waste prior to and after storm events or other emergencies within the normal scope of services defined in this section.

SECTION 3: RESPONSIBILITIES OF CONTRACTOR

During the term of Contractor's operation and maintenance of the Transfer Station pursuant to this Agreement, Contractor shall be responsible for the following:

- 3.1. Operation of the Transfer Station in accordance with the provisions of Virginia's Solid Waste Management Regulations 9-VAC-20-80-340, as they may be amended from time to time.
- 3.2. Appointment of employees to perform services under this Agreement with the following minimum requirements:
 - 3.2.1. One or more qualified persons licensed or certified by the Virginia Department of Environmental Quality (DEQ) to serve as the Operator in charge of the Transfer Station. Contractor shall give the name of such persons to the County no later than within one week of any personnel change during the period of this Agreement. At least one such employee shall be on site during all hours of operation of the Transfer Station.
 - 3.2.2. All other employees or agents of Contractor assigned to provide services at the Transfer Station pursuant to this Agreement shall be fully qualified to perform their respective tasks.
 - 3.2.3. The Contractor must provide the ability for the Operator in charge of the Transfer Station to reach the Transfer Station within thirty (30) minutes of notification of an emergency by the County to the Contractor.
- 3.3. Providing a minimum three (3) 40 cubic yard roll off cans in good working order and in a neat and orderly condition, including making necessary repairs and replacements consistent with accepted procedures for handling Solid Waste brought to the Transfer Station by citizens and small businesses. This requirement shall discontinue after construction and beginning of operations of the Citizen Drop-off Center.
- 3.4. Providing routine maintenance and repair to the Transfer Station as directed by the County but not to exceed \$10,000 per year, except for repair of damage caused by the negligence of the Contractor, its employees or agents. This maintenance and repair generally shall include but shall not be limited to the Transfer Station floor,

entry ramp asphalt, and tunnel and deflector, and shall include (without limitation):

- 3.4.1. Daily cleanup of debris both inside the tunnel and around the building and windblown debris in the immediate vicinity of the building.
- 3.4.2. Repair to the Transfer Station building siding and structural elements damage as a result of actions by the Contractor or any party under direction and control of the Contractor.
- 3.5. Repairing road edges or ruts adjacent to roads used by the Contractor within the closed landfill damaged as a result of Contractor's employees or agents operating vehicles or equipment off defined road surfaces.
- 3.6. Repairing any public facility infrastructure damaged as a result of any negligent act or omission of personnel or agent of the Contractor or of any subcontractor.
- 3.7. Providing all direction for traffic from 40 cubic yard container site to Transfer Station as needed during operating hours.
- 3.8. Notwithstanding the foregoing, at the expiration or termination of this Agreement, returning the Transfer Station and surrounding areas used by the Contractor to their original condition except that the Contractor shall not be responsible for:
 - 3.8.1. Normal wear and tear
 - 3.8.2. Any repairs or maintenance caused by or resulting from the acts or omissions of the County.
 - 3.8.3. Any repairs or maintenance, which are the responsibility of the County.
 - 3.8.4. Any Contractor modifications approved in writing by the County.
- 3.9. Obtaining any and all necessary Contractor Permits.
- 3.10. Securing all personnel, equipment, and vehicles required to perform the services pursuant to this Agreement.
- 3.11. Notifying promptly the County of any event that forces the closing of the Transfer Station during normal business hours. To the extent reasonably possible, Contractor shall be responsible for continuing to dispose of Acceptable Waste if the Transfer Station is inoperable due to any reason. If the Transfer Station is

inoperable due to the negligence or willful misconduct of Contractor, the County shall be compensated for any additional direct costs incurred by the County. If the Transfer Station is inoperable for any other reason, Contractor shall be compensated for any additional direct costs incurred on a time and materials basis. If the Transfer Station is closed due to a Force Majeure event, Contractor and the County shall make every effort to reopen the Transfer Station as soon as possible.

- 3.12. Paying all charges for utilities serving the Transfer Station incurred during the term hereof, including, but not limited to, water, sewer, telephone, gas, and electricity, and fees related to storm drainage. Contractor shall be responsible for the treatment and proper disposal of all wash down water used in cleaning the Transfer Station.
- 3.13. Using its reasonable efforts to segregate Unacceptable Waste from the waste stream, and requiring the hauler thereof to remove the Unacceptable Waste from the Transfer Station and dispose of it properly. Any Unacceptable Waste delivered to the Transfer Station by the County or by any Franchise Hauler shall be the County's responsibility.
- 3.14. Allowing County designated personnel to inspect the Transfer Station at any reasonable time with notice throughout the duration of this Agreement.
- 3.15. Citizen Drop-off Center. Contractor shall construct and operate a Citizen Drop-off Center ("the Center") located at 145 Goodwin Neck Road and in accordance with the Contractor Proposal. Center shall be designed to handle a minimum of 12 residents at a time. The Center shall be manned during all operating hours during which the Transfer Station is in operation. The Center shall be maintained in a clean and orderly manner at all times, and shall be adequately lit during times of extended hours of operation. The County reserves the right to approve or disapprove any and all designs and/or sight locations for the Center but shall not unreasonably withhold approval of development plans which are consistent with the concept drawings included in the Contractor's Proposal, and attached hereto as Exhibit A
- 3.16. Scales Facilities. The Contractor shall relocate the existing scales and associated facilities ("the Scales Facilities") to a location mutually agreed upon with the County and within the confines of the County property located in and directly adjacent to 145 Goodwin Neck Road.
- 3.17. The construction schedule, ownership, and cost responsibility for construction of the Citizen Drop-off Center and scales facilities shall be as follows:

- 3.17.1. The construction completion date for both the Center and relocation of the Scales Facilities shall be mutually agreed upon but shall be no later than June 30, 2006.
- 3.17.2. The County shall own both the Center and the Scales Facilities upon the completion of their relocation and construction. No payment is due to the Contractor by the County for the construction of the Center or the relocation of the Scales Facilities if this Agreement remains in full force and effect through June 30, 2016, other than the monthly services fee set out in section 5.1.1.
- 3.17.3. The cost of the design and relocation of the Scales Facilities and the design and construction of the Center, including all facilities, containers, sitework, landscaping and utilities within the boundaries shown on Exhibit A shall be the responsibility of the Contractor. Final design and construction shall be approved by the County, and the Contractor shall meet all applicable Federal, State, and local codes and regulations in all respects.
- 3.17.4. In the event that the term of this Agreement expires, or is terminated by the County or of the County's refusal to extend the Contract to June 30, 2016, the County shall pay the Contractor a prorated construction cost for the Center and the relocation of the Scales Facilities. The prorated amount shall be determined by multiplying the total cost of construction of the Center and the cost of the relocation of the Scales Facilities borne by Contractor by a fraction which is derived by dividing the length of time between the termination date and June 30, 2016 by the length of time between the completion date of the Center (and the relocation of the Scales Facilities) and June 30, 2016.
- 3.17.5. Cost and construction of ingress and egress sitework and utilities to the Center and Scales Facilities, including roads, landscaping, and utilities, shall be the responsibility of the County.

SECTION 4: RESPONSIBILITIES OF THE COUNTY

The County shall:

- 4.1. Permit Contractor to have access to the Transfer Station, or any other facilities necessary for Contractor to perform its obligations hereunder, or to scale house records for the purpose of auditing them if deemed necessary.
- 4.2. Maintain and operate a scale house and weighing scales and a recycling center at the County's Waste Management Center located at 145 Goodwin Neck Road. In the event the weighing scale becomes inoperable, the County shall use its best efforts to

repair or replace the scale. During a scale breakdown, the County shall estimate each truck's Acceptable Waste tonnage based upon its volume and historical weight data. In the event of a scale breakdown lasting ten (10) days or more, the County shall, at its expense, rent or otherwise obtain temporary scales until the permanent scales are repaired or replaced.

- 4.3. Provide Contractor personnel the use of a designated bathroom facility during the hours the Transfer Station is open.
- 4.4. Provide, by noon of each business day, an itemization and summary of all Acceptable Waste in tons delivered to the Transfer Station during the previous day. The report shall specifically identify:
 - 4.4.1. The total tonnage of Acceptable Waste delivered by the Franchise Hauler(s).
 - 4.4.2. The total tonnage of Acceptable Waste delivered by York County residents, businesses, and the County (estimated).
 - 4.4.3. The total tonnage of Acceptable Waste delivered by Private Haulers.
- 4.5. The County shall collect any and all fees required by §19-24, York County Code, for the disposal of Acceptable Waste at the Transfer Station. The County shall have the right periodically to amend such fees to reflect current transfer costs, facilities fees, disposal fees, and other costs of its Solid Waste program, as the County deems appropriate.
- 4.6. Perform all repairs and maintenance in a timely manner to the Transfer Station which result from any acts or omissions of the County, or which exceed the Maintenance Limit provided for in Section 3.4.
- 4.7. Maintain all landscaping, utilities connections, grounds maintenance, ice and snow removal, roadway, asphalt or pavement repairs, and any other repairs and maintenance to the infrastructure serving the Transfer Station.

SECTION 5: CONSIDERATION FOR TRANSFER STATION OPERATION

- 5.1. For the services described in Sections 2 and 3 of this Agreement, the following fee(s) shall be paid:
 - 5.1.1. The County shall pay a fixed fee of **\$2,270 per month** to operate the Citizen Drop-off Center once constructed and in operation.

- 5.1.2. The County shall pay the Contractor a fee of **\$27.50 per ton** to receive, process, and dispose of all Acceptable Waste not generated by the Contractor.
- 5.1.3. The Contractor shall pay to the County a facility use fee of **\$1.84 per ton** for all of Contractor's commercial Acceptable Waste delivered to the Transfer Station.
- 5.2. The per ton fees above shall be adjusted on July 1, 2005 and on July 1 of each year thereafter during the term of this Agreement in an amount equal to any increase or decrease in the Cost Index for the twelve (12) month period prior to the date of the adjustment or to the contract start date for the initial adjustment. No annual increase or decrease under this provision shall exceed six percent (6%).
- 5.3. The fees above also may be increased, with the agreement of the County, which agreement shall not unreasonably be withheld, at any time to reflect any increases in Contractor's cost of operations arising from the compliance by Contractor with any Change in Law, as documented by Contractor to the reasonable satisfaction of the County.
- 5.4. Contractor will submit a single monthly invoice reconciling all monies due each party, both under this Contract and the hauling and disposal requirements listed in section 2.1 of the Contract. This monthly invoice, indicating the net amount due Contractor, will be paid by the County within thirty days of the receipt of an approvable invoice.

SECTION 6: TERM OF AGREEMENT

This Agreement becomes **effective on January 1, 2005** and shall **terminate on June 30, 2007**; the parties may, by mutual agreement in writing, renew this Agreement for three additional terms of three years each.

SECTION 7: IMMIGRATION REFORM AND CONTROL ACT OF 1986

Contractor certifies that it does not and will not during the performance of this Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

SECTION 8: COMPLIANCE WITH LAWS AND REGULATIONS

Contractor and the County each agrees that it will qualify under and comply with any and all Federal, state and local laws and regulations now in effect, or hereafter enacted during the term of this Agreement, which are applicable to it, its employees, agents or subcontractors, if any, including the provisions of Chapter 19, York County Code.

SECTION 9: INDEPENDENT CONTRACTOR

Contractor shall perform all work and services described in this Agreement as an independent contractor and not as an officer, agent, servant or employee of the County. Except as otherwise provided under this Agreement, Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same, and nothing herein shall be construed as creating a partnership or joint venture between the County and Contractor. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the County, and no such person shall be entitled to any benefits available or granted to employees of the County.

SECTION 10: NON-APPROPRIATION

The Transfer Station governed by this Agreement is funded solely through funds appropriated annually by the County, and the performance by the County of any of its obligations hereunder are expressly made subject to the availability of lawfully appropriated funds necessary for the performance of such obligations. Upon a failure by the County Board of Supervisors to appropriate such funding, the County shall have the right to terminate this Agreement upon written notice to Contractor, and thereafter neither party shall have any rights and obligations hereunder. Failure to appropriate funds shall not be a breach or default under this Agreement and Contractor sole remedy shall be the right to terminate this Agreement and to receive payment for services rendered as of the date of termination.

SECTION 11: PERMITS AND LICENSES

Contractor at its sole cost and expense, shall maintain throughout the term of this Agreement all permits, licenses and approvals necessary or required for Contractor to perform the work and services described herein, as required by Chapter 19 of the County Code.

SECTION 12: LAW TO GOVERN

This Agreement is entered into and is to be performed in the Commonwealth of Virginia. The County and Contractor agree that the laws of the Commonwealth of Virginia shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

SECTION 13: INDEPENDENT CONTRACTOR

Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the County. Except as otherwise provided under this Agreement, Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same, and nothing herein shall be construed as creating a partnership or joint venture between the County and Contractor. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the County, and no such person shall be entitled to any benefits available or granted to employees of the County.

SECTION 14: SUBCONTRACTORS

Contractor here by agrees that no subcontractor will be used to perform any of the services to be provided to the County under this Agreement without written approval of the County. Contractor further agrees that any subcontractor shall meet all County requirements imposed on Contractor. Contractor may use temporary employees from temporary employment agencies.

SECTION 15: NON-ASSIGNMENT

Other than Contractor assignment to a parent company or a wholly-owned subsidiary, neither Contractor nor the County shall assign, transfer, convey, or otherwise hypothecate this Agreement or their rights, duties or obligation hereunder or any part thereof without the prior written consent of the other.

SECTION 16: INSURANCE

Contractor shall obtain and maintain throughout the term of this Agreement, at Contractor sole cost and expense, not less than the insurance coverage set forth below.

Worker's Compensation

Coverage A: Statutory Requirements

Coverage B: \$100,000 per occurrence.

Coverage C: \$100,000 / \$100, 000 Accident and/or Disease

All States Endorsement

Comprehensive Automobile Liability

Bodily Injury: \$1,000,000 each person

\$5,000,000 each occurrence

Property Damage: \$1,000,000 each occurrence

To include coverage for all owned, non-owned, leased and hired automobiles.

Comprehensive General Liability

Bodily Injury:	\$1,000,000 each person \$5,000,000 each occurrence
Property Damage:	\$1,000,000 each occurrence
Including:	A. Completed operations/products B. Contractual liability for specified Agreements C. Personal injury D. (XCU) Explosion, collapse and underground coverage E. Broad form property damage

Contractor shall deliver to the County, prior to the execution date of this Agreement, Certificates of Insurance from carriers licensed in the Commonwealth of Virginia acceptable to the County for the limits specified above, with the County and its officers, agents and employees named as additional insured's. In addition, the insurer shall agree to give the County thirty 30 days written notice of its decision to cancel, change or fail to renew coverage.

SECTION 17: PERFORMANCE BOND

Upon execution of this Agreement, Contractor shall furnish to the County a performance bond, in the form attached hereto for the faithful performance of this Agreement and all obligations arising hereunder in the amount of 100 percent of the estimated contract amount for the initial 12-month period of the term or this Agreement, which the parties agree is five hundred thousand dollars (\$500,000).

A surety company licensed to do business in the Commonwealth of Virginia and acceptable to the County shall execute the bond. A certificate from the surety company showing that the bond premiums are paid in full shall accompany the bond. The bond shall be extended annually thereafter 30 days in advance of the anniversary date in an amount equal to the total amount of consideration to be paid by the County under this Agreement for the ensuing year. Contractor shall also furnish the bond required by chapter 19 of the County Code.

SECTION 18: INDEMNIFICATION

18.1. Contractor shall indemnify and hold harmless the County, and its officers, agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, of whatever kind or nature arising out of or resulting from the provision of or from any failure to provide any construction, product, goods, or services required hereunder, including but not limited to any such claim, damage, loss or expense, that is attributable to bodily injury, sickness, disease or death, or to

injury to or destruction of tangible property, including the loss of use resulting therefrom, or to economic loss; provided, however, that Contractor's indemnification obligation hereunder shall be limited to claims, damages, losses, and expenses caused in whole or in part by any negligent act or omission of Contractor, or of any subcontractor (a "Subcontractor") performing work required by this Agreement, or any one directly or indirectly employed by any of them or anyone for whose acts Contractor or any Subcontractor may be liable.

- 18.2. Contractor shall also guarantee and hold harmless Virginia Dominion Power formally known as Virginia Electric and Power Company (VEPCO) and Virginia Power from liability for any and all claims for damages and injuries sustained directly or indirectly from work performed within the existing high-voltage power transmission line easement approximately 500 feet in width that lies across the property adjacent to the Transfer Station on which the County's Waste Management Facility is Located, to the extent required by paragraph 11 of that certain agreement between the County and VEPCO dated February 22, 1980, copy attached hereto as Exhibit B
- 18.3. Contractor's indemnification obligations as set out in Sections 18.1 and 18.2, above, with respect to any and all claims by any employee or statutory employee of Contractor, or any Subcontractor, or by anyone directly or indirectly employed by any of them, or anyone for whose acts Contractor or Subcontractor may be liable, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

SECTION 19: TERMINATION

- 19.1. In the event Contractor defaults in the performance of any of the material, covenants or agreements to be kept, done, or performed by it under the terms of this Agreement, the County at its option may notify Contractor in writing of the nature of such default. Within fifteen (15) days following such notice,
 - 19.1.1. Contractor shall correct the default; or
 - 19.1.2. In the event of a default not capable of being corrected within fifteen (15) days, Contractor shall commence correcting the default within fifteen (15) days of the County's notification. The County, in its unreviewable discretion, may grant an extension of time for the correction of the default or for the commencement of actions to correct the default providing that, in the County's reasonable judgment, Contractor is diligently pursuing a correction.

19.2. If Contractor fails to correct the default as provided above, the County, without further notice, shall have all of the following rights which the County may exercise singly or in combination, in addition to any other right or remedy allowed by law.

19.2.1. The right to declare that this Agreement, together with all rights granted Contractor hereunder, are terminated effective upon such date as the County shall designate; and

19.2.2. The right to contract with others to perform the services otherwise to be performed by Contractor, or to perform such services itself, in which event Contractor shall be liable to the County for the costs expended by the County to secure such performance; and

19.2.3. The right to pursue all legal and equitable remedies against Contractor or on its bond posted under Section 17 hereof to recover the costs, expenses, and losses by such default.

19.2.4. In addition to other provisions of this Agreement, Contractor shall be deemed to be in default by reason of any of the following:

19.2.4.1. Violation of Federal, state, or local laws or regulations.

19.2.4.2. Failure to maintain the insurance or bonds required by this Agreement.

19.2.4.3. Declaration of bankruptcy.

19.2.5. In the event that the County's rights are terminated under Section 1.1 of the Lease Agreement with Virginia Peninsula Public Service Authority, and the County is excluded from possession of the Transfer Station, then, at the option of the County, this Agreement shall terminate. In the event of a termination of this Agreement, the parties shall pay each other the consideration set forth in Sections 3.17.4 and 5 that is due as of the date of termination.

SECTION 20: REPRESENTATIONS AND WARRANTIES

20.1. Contractor represents and warrants that it is duly qualified to conduct business in the State of Virginia, and has the power and authority to enter into this Agreement and to perform the obligations set forth herein. The execution and delivery of this Agreement has been approved by all necessary action of the Board of Directors of Contractor, and no other actions are required in order to constitute this Agreement as a binding obligation of a contract.

- 20.2. The County represents and warrants that it is a political subdivision of the Commonwealth of Virginia, and has the power and authority to enter and perform the obligations set forth herein. The execution and delivery of this Agreement has been approved by all necessary action of the County Board of Supervisors and no other actions are required in order to constitute this Agreement as a binding obligation of the County.
- 20.3. The County represents and warrants that nothing contained in the Ground Lease or the Lease Agreement limits or restricts the County's right to enter into this Agreement, and to grant to Contractor the duties and rights hereunder. Within ninety (90) days of the Effective Date, the County shall provide Contractor in form reasonably satisfactory to Contractor counsel a letter signed by an authorized representative of VPPSA, wherein VPPSA acknowledges the terms of this Agreement, consents to its terms, and agrees that if for any reason it succeeds to the rights of the County in the Transfer Station, it shall honor the terms of this Agreement.
- 20.4. In consideration of the foregoing, Contractor acknowledges that this Agreement is intended as an operating and maintenance agreement only, and is not intended to be construed as a sub-lease by the County of the Transfer Station to Contractor, or as an assignment to Contractor of any of the County's interest in the Transfer Station pursuant to the Lease Agreement. Nothing in this Agreement is intended to alter the terms or conditions of the Ground Lease or the Lease Agreement.
- 20.5. The County further represents and warrants that it owns the Transfer Station, and that there are no limitations, restrictions, encumbrances or liens that affect its right to enter into this Agreement, and to grant to Contractor the duties and rights hereunder.

SECTION 21: NOTICES

All notices required or contemplated by this Agreement shall be personally served or mailed by U.S. Mail, Postage Prepaid - Return Receipt Requested, addressed to the parties as follows:

To the County: County of York, Virginia
County Administrator
224 Ballard Street
Post Office Box 532
Yorktown, Virginia 23690

With Copy To: Waste Service Manager:
 224 Ballard Street
 Post Office Box 532
 Yorktown, Virginia 23690

To Contractor: _____

Or to such other persons and addresses as the parties may designate in writing.

SECTION 22: CONTRACTOR'S RECORDS

22.1. Contractor shall maintain its books and records related to the performance of this Agreement in accordance with the following minimum requirements:

22.1.1. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers and canceled checks, as well as all other records or documents evidencing or relating to charges for services, expenditures or disbursements borne by the County for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement.

22.1.2. Contractor shall maintain all documents and records that demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

22.2. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time, during regular business hours, upon written request by the County or its designated agent or representative. The records shall be available to the County at the address indicated above for receipt of notices in this Agreement.

SECTION 23: INSPECTIONS

Contractor agrees to permit County-designated personnel to inspect its routes, disposal and hauling equipment, complaint logs, or procedures to the extent that such pertain to the performance of this Agreement.

SECTION 24: WAIVER

A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

SECTION 25: FORCE MAJEURE

- 25.1. It is mutually understood and agreed by the parties that Contractor shall be relieved of its obligation under this Agreement during any period or periods of time when Force Majeure renders impossible its performance under this Agreement. Upon the occurrence of such an event of Force Majeure, Contractor shall promptly give the County written notice of its best, good faith estimate of the period of time it expects conditions of Force Majeure to render impossible its performance hereunder.
- 25.2. Should Contractor be unable to render performance under this Agreement by reason of Force Majeure, the County shall have the right to secure another vendor to perform any or all portions of the service required under this Agreement for the period of the expected duration of Contractor's inability to perform as set out in Contractor's written notice. In the event Contractor becomes able to resume the performance of its obligations prior to the date set out in the written notice, the County, in its sole discretion, shall have the right to continue service during the notice period with any alternate vendor procured during the notice period or instruct Contractor to resume services notwithstanding anything herein to the contrary.
- 25.3. The County shall resume service with Contractor according to the terms of this agreement after expiration of the notice period, unless Contractor shall provide further written notice of its continuing inability to perform by reason of Force Majeure.
- 25.4. At any time that Contractor's performance is suspended as set out in this Section, it is understood and agreed by the parties that the County shall not be obligated to Contractor for any or all service interrupted by reason of Force Majeure.

SECTION 26: COMPLIANCE WITH EQUAL OPPORTUNITY

26.1. During the performance of this Agreement, Contractor agrees as follows:

- 26.1.1. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment,

except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

- 26.1.2. Contractor, in all solicitations for advertisements for employees placed in behalf of Contractor, will state that Contractor is an equal opportunity employer.
- 26.1.3. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- 26.2. Contractor shall comply with Executive Order No. 11246, entitled "Equal Employment Opportunity" as supplemented in Department of Labor Regulation (41 CFR, Part 60). During the performance of this Agreement, Contractor for itself, its assignees and successors in interest, agrees to comply with Title VI of the Civil Rights Act of 1964, which is made part of this Agreement by reference, and with any other applicable provision of federal or state law guaranteeing equal employment opportunity. In accordance with §2.2-4343.1 of the Code of Virginia, et. seq., the owner shall not (i) discriminate against a faith-based organization as defined in Code of Virginia section 2.2-4343.1(B) on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F of section 2.2-4343.1 the Code of Virginia, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.
- 26.3. Pursuant to Code of Virginia section 2.2-4343.1, the County shall not discriminate against faith-based organizations, as such are defined in Code of Virginia section 2.2-4343.1(B). The County shall not discriminate against a faith-based organization on the basis of the organization's religious character, or impose conditions that restrict the religious character of the faith-based organization except as may be allowed by statute, or impair, diminish, or discourage the exercise of religious freedom by the recipients of goods, services, or disbursements from any faith-based organization.

SECTION 27: TITLES OF SECTIONS

Section headings inserted herein are for convenience only, and are not intended to be used as aids to interpretation and are not binding on the parties.

SECTION 28: AMENDMENT

This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

SECTION 29: SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or section contained in this Agreement shall not affect the validity of the remaining portion of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

SECTION 30: SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties hereto, their successors and assigns.

SECTION 31: ENTIRETY

This Agreement and any Exhibits attached hereto contain the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written in (_____) counterparts each of which shall for all purposes be deemed an original.

ATTEST: _____

BY: _____
Title: _____

BY: _____
Title: _____

ATTEST: County of York, Virginia

BY: _____
Title: _____

BY: _____
Title: _____

CONTRACTOR'S ADDRESS:

CONTRACTOR'S FEDERAL ID NO.:

APPROVED AS TO FORM:

James E. Barnett, Jr., County Attorney

Date

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENT, that _____
(Full legal name
_____, a _____,
of Contractor) (corporation, partnership or individual)
hereinafter called the Principal, and _____
(Name of corporate surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto the County of York, in the penal sum of _____ Dollars, (\$_____), in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain Agreement for Operation and Maintenance of Solid Waste Transfer Station with the County, dated the ____ day of _____, 200__, a copy of which is attached hereto and made a part hereof.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Agreement during the term thereof, and any extensions thereof which may be granted by the County, with or without notice to the Surety, and if it shall satisfy all claims and demands incurred under such Agreement, and shall fully indemnify and save harmless the County from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the County all outlay and expense which the County may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement.

PROVIDED, FURTHER, that no default settlement between the County and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in two (2) counterparts each one of which shall be deemed an original, this the ____ day of _____, 200_.

ATTEST:

PRINCIPAL

By:_____

TITLE: _____

TITLE: _____

ATTEST:

SURETY

By:_____

TITLE: _____

TITLE: _____

Note: Date of bond must not be prior to the date of the Agreement.

Approved as to form:

County Attorney

EXHIBIT A

